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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: JLT Group, Inc.

File: B-402603.2

Date: June 30, 2010

David S. Black, Esq., Jacob W. Scott, Esq., and Gregory R. Hallmark, Esq., Holland & Knight LLP, for the protester.

Scott F. McCleary, Esq., General Services Administration, Public Buildings Service, for the agency.

Frank Maguire, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Provisions in solicitation for leased space requiring indoor parking and 9-foot ceilings are unobjectionable where record establishes that requirements are reasonably necessary to meet agency's needs.

DECISION

JLT Group, Inc. (JLT), of St. Paul, Minnesota, protests the terms of solicitation for offers (SFO) No. GS-05B-18407, issued by the General Services Administration (GSA), Public Buildings Service, for leased office space in the Minneapolis-St. Paul, Minnesota metropolitan area. The protester asserts that the SFO improperly restricts competition.

We deny the protest.

BACKGROUND

On Nov. 19, 2009, GSA published an advertisement on FedBizOpps regarding the government's need for approximately 233,000 square feet of office space in the Minneapolis-St. Paul metropolitan area and a request for expressions of interest. Contracting Officer's (CO) Statement at 2; Agency Report (AR) exh. 3. GSA received 16 expressions of interest, including 1 from JLT. CO's Statement at 2. On February 22, 2010, GSA issued the SFO to three potential offerors, not including JLT, whose buildings were identified as being within the delineated area and as meeting or having the capability of meeting the minimum requirements of the solicitation. Id.

JLT subsequently filed a protest in our Office objecting to its exclusion from the competition. In response, GSA furnished JLT a copy of the SFO and we dismissed the protest (B-402603, Mar. 25, 2010).

On April 1, JLT filed this protest challenging certain of the SFO requirements as unduly restrictive of competition, specifically, the requirements for indoor parking and a 9 foot minimum ceiling height. Id.

A contracting agency has the discretion to determine its needs and the best method to accommodate them. Parcel 47C LLC, B-286324, B-286324.2, Dec. 26, 2000, 2001 CPD ¶ 44 at 7. In preparing a solicitation, a contracting agency is required to specify its needs in a manner designed to achieve full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy its legitimate needs. 41 U.S.C. § 253a(a)(1) (2006); Innovative Refrigeration Concepts, B-272370, Sept. 30, 1996, 96-2 CPD ¶ 127 at 3. We will review a challenge to allegedly restrictive requirements to determine whether the restrictions are reasonably necessary to meet the agency's needs. The adequacy of the agency's justification is ascertained through examining whether the agency's explanation is reasonable, that is, whether the explanation can withstand logical scrutiny. Chadwick-Helmuth Co., Inc., B-279621.2, Aug. 17, 1998, 98-2 CPD ¶ 44 at 3. A protester's mere disagreement with the agency's judgment concerning its needs and how to accommodate them is not sufficient to establish that the agency's judgment is unreasonable. Dynamic Access Sys., B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4. We find that the agency has adequately justified the need for the requirements.

INDOOR PARKING

The SFO provides, with regard to parking, as follows:

The Government requires 25 reserved parking spaces inside the building, or in an attached structured garage. In addition, the greater of 830 on-site surface parking spaces (or attached structured parking spaces) or what is required by local code, for employee parking. Additionally, general unreserved parking for visitors shall be provided as required by local code.

SFO at 1.8.

The protester asserts that "covered parking spaces cannot possibly be 'necessary' to meet any legitimate 'minimum' need of the Agency," but, rather, is "exactly the kind of 'preference' or 'convenience' that cannot be included in a solicitation as a basis to restrict competition," and that "Federal office buildings across the country operate without covered parking for guests or employees." Protest at 4. In response, the agency explains that the inside parking is reasonably necessary to "house government-owned vehicles." AR at 3; CO's Statement at 3.

We find no basis for objecting to the requirement. While indoor parking may not be available at all federal buildings, it is a common feature, see, e.g., Acquest Uniland LLC, B-280518, Oct. 13, 1998, 98-2 CPD ¶ 110; Richard S. Cohen, B-256017.4, B-256017.5, June 27, 1994, 94-1 CPD ¶ 382, and the qualitative dissimilarity between inside and outside parking, especially given the climate in central Minnesota, is manifest.¹ In light of these considerations, we find nothing unreasonable in the agency's requiring a limited amount of indoor parking for the purpose, in this case, of sheltering government-owned vehicles.

CEILING HEIGHT

With regard to ceiling height, the SFO requires as follows:

Ceilings shall be at least 9 feet, 0 inches and no more than 12 feet, 0 inches measured from floor to the lowest obstruction. Areas with raised flooring shall maintain these ceiling height limitations above the finished raised flooring.

SFO at 6-7.

JLT asserts that the 9 foot minimum ceiling height cannot be justified as a minimum agency requirement, and points to six examples of federal buildings in the Minneapolis-St. Paul area that have ceiling heights of less than 9 feet. Protest at 4.

The agency justifies the 9 foot minimum ceiling height on several bases, including, in particular, the basis that it is a standard requirement contained in the Facilities Standards for the Public Buildings Service, PBS-P100, Rev. Mar. 2005, AR at 4; see CO's Statement at 4; AR exh. 14, Mar. 2005, § 3.2.

The requirement is unobjectionable. The Standards are intended to establish "design standards and criteria for new buildings, major and minor alterations, and work in historic structures." Standards at 1.1. Although the protester asserts that the Standards are "mere guidelines and do not have the force of law," Comments at 6-7, we think it is plainly reasonable for the agency to attempt to comply with standards that were formulated for application to procurements such as this one. 120 Church Street Assocs., B-232139, Nov. 21, 1988, 88-2 CPD ¶ 496 at 6-7.

The fact that there are other buildings in the area with ceiling heights of less than 9 feet carries little weight. As a general matter, each procurement stands on its own. HG Properties A, L.P., B-280652, Nov. 2, 1998, 98-2 CPD ¶ 104. Thus, the fact that other GSA-leased properties may not meet the 9 foot ceiling requirement does not

¹ The agency advises that there are 22 inside parking spaces at the building it currently occupies. AR at 3; CO's Statement at 3.

demonstrate that the 9 foot requirement is not a reasonable minimum need of the agency here. Marine Transport Lines, Inc., B-224480.5, July 27, 1987, 87-2 CPD ¶ 91 at 4 (fact that agency did not previously require crew members operating cable ships to have specified experience does not undermine justification for including such requirements in current solicitation).

JLT asserts that only approximately three percent of the space in its building--primarily interior corridor areas--has ceilings at a height of less than 9 feet, and that this should be acceptable. Comments at 6, n. 4. However, the agency explains that any ceilings at less than the 9 foot minimum would be problematic because the current office layout may change and a non-uniform ceiling height would make it difficult to modify floor plans during the term of the lease. AR at 4-5. The agency's position is persuasive; we find no basis for requiring the agency to accept the limitations on desired design flexibility that would result from permitting varying ceiling heights.

The protester asserts that the challenged restrictions "are likely to reduce the available pool of buildings that can compete to fill the Agency's requirement." Protest at 5. Where a requirement reflects an agency's minimum needs, however, the fact that a potential competitor will be unable to meet the requirement does not establish an impropriety. John F. Kenefick Photogrammetric Consultant, Inc., B-238384, May 4, 1990, 90-1 CPD ¶ 452.

The protest is denied.

Lynn H. Gibson
Acting General Counsel